

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JOSEPH CALDWELL,**

**Plaintiff,**

**vs.**

**1:20-cv-00003-JB-JFR**

**UNIVERSITY OF NEW MEXICO BOARD OF REGENTS,  
NASHA TORREZ,  
EDDIE NUÑEZ,  
LOBO DEVELOPMENT CORPORATION, and  
ACC OP (UNM SOUTH) LLC,**

**Defendants,**

**DEFENDANT NASHA TORREZ'S UNOPPOSED MOTION TO VACATE  
SETTLEMENT CONFERENCE AND STAY PROCEEDINGS**

COMES NOW, Nasha Torrez, by and through her counsel of record, Park & Associates, LLC (Alfred A. Park and Lawrence M. Marcus) and hereby moves the Court to vacate the deadlines in the Joint Status Report and Provisional Discovery Plan [Doc No. 35, filed April 20, 2020] (hereinafter "Joint Status Report"), and the Scheduling Order [Doc. No. 37, entered April 24, 2020]. In addition, Ms. Torrez moves the Court to vacate Settlement Conference scheduled for January 20, 2021, and to order a stay of discovery and other proceedings until such time as the Court rules on her Motion for Judgment on the Pleadings. Plaintiff's Counsel stated that Plaintiff does not oppose this Motion. For her Motion, Ms. Torrez STATES AS FOLLOWS:

United States Supreme Court, Tenth Circuit, and United States District Court for the District of New Mexico case law provides for a stay of discovery upon the filing of a qualified immunity motion. *See generally*, Siegert v. Gilley, 500 U.S. 226, 231 (1991); Jiron v. City of Lakewood, 392 F.3d 410, 414 (10th Cir. 2004); Workman v. Jordan, 958 F.2d 332, 336 (10th Cir. 1992). Herrera v. Santa Fe Pub. Sch., No. CIV 11-0422 JB/KBM, 2012 WL 6846393, at \*7

(D.N.M. Dec. 20, 2012) (unpublished disposition). The United States Supreme Court has repeatedly “stressed the importance of resolving qualified immunity decisions at the earliest possible stage in litigation.” Pearson v. Callahan, 555 U.S. 223, 231 (2009), citing Hunter v. Bryant, 502 U.S. 224, 227 (1991) (per curiam).

Ms. Torrez filed an opposed motion for Judgment on the Pleadings as to the entirety of Plaintiff’s Complaint, based, at least in part, on qualified immunity [Doc. No 43, filed April 29, 2020]. This Motion is pending. The existence of qualified immunity is to protect public officials performing discretionary functions from the burden of litigation. Harlow v. Fitzgerald, 457 U.S. 800, 806 (1982). A defendant is generally entitled to have questions of immunity resolved before being required to engage in discovery and other pretrial proceedings. *See*, Siegert, 50 U.S. at 232-33. “One of the purposes of immunity ... is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed on those defending a long drawn out lawsuit.” *Id.* at 232. “Until the threshold question of immunity is resolved, discovery should not be allowed.” Harlow, 457 U.S. at 818.

Because discovery is inappropriate, no discovery has thus far been conducted in this case, even though no stay has been entered. During the pendency of Ms. Torrez's Motion, several deadlines have expired, including the deadline for discovery. Moreover, several deadlines are rapidly approaching, including the deadline for dispositive motions. Further, the parties are not currently prepared to mediate this matter, as some discovery will be necessary prior to any settlement conference. It is thus in the interest of justice to vacate the Joint Status Report and the Scheduling Order, and it would serve the interest of judicial economy to vacate a settlement conference that is highly unlikely to lead to any resolution.

WHEREFORE, Defendant Nasha Torrez respectfully moves the Court to enter an Order vacating the Settlement Conference scheduled for January 20, 2021, as well as the Joint Status Report and the Scheduling Order in the above styled cause. Ms. Torrez also requests an Order staying all proceedings and discovery in this matter until such time as the Court resolves the qualified immunity Motion filed and pending before the Court, and for such further relief as the Court deems just.

Respectfully Submitted,

PARK & ASSOCIATES, LLC

/s/ Lawrence M. Marcus  
Alfred A. Park  
Lawrence M. Marcus  
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and Nasha Torrez*  
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I hereby certify that a true and correct copy of the foregoing was served via CM/ECF filing system to all counsel of record on this 6<sup>th</sup> day of January 2020.

/s/ Lawrence M. Marcus  
Lawrence M. Marcus